IN THE

United States Supreme Court

OF

America

ED WETZEL, *Alleged Bankrupt.*

Vs.

WM. F. SCHAEFER, *Alleged Trustee.*

A PETITION FOR CERTIORARI.

To Circuit Court of Appeals, 5th Circuit.

by Ed Wetzel.

INDEX

Page

Rule 38, B and 38 (8) and Sec. 237 A and B..... 5

Assignment of Errors..... 6

Congressional Acts 1939 and Rules 38 B and 8..... 6

Action Taken in Court of Appeals..... 7

Petition and Brief..... 8

Erickson vs. Richardson, 86 Fed. 963.....9, 12

Section 237, 1939..... 9

Assignments of Errors of Court of Appeals.....10, 11

Columbia Realty Co., 101 Fed. 965..... 12
Re Markie Holding Co., 296, Fed. 516
Syding vs. Hargantine, 244 Fed. 719, Rec. Page 3

Re Sharland vs. Conklin, 30 Fed. 2nd 486..... 13

McCoullough vs. Parks, 199 Sec. 750..... 13

Straton vs. News, 283 U. S. 318.....13, 14
Pleading in Equity Court and set off of $20,000 and interest semi-anually from March 2, 1916.
See Decree of Equity Court, Rec. Page 12, 13 and 70.
And Petition and Schedules were withdrawn December 11, 1928.
Re 287 U. S. 77
Re 274 U. S. 1
Security Mortgage Co. vs. Powers, 278 U. S. 149
Record Page 4 and 69.

Maynard vs. Elliott, 283 U. S. 273..... 15

Schall vs. Conars, Record Page 4, 251 U. S. 239..... 15

Re 142 Fed. 2nd 245..... 15

Re Magnolia Petroleum Co., 309 U. S. 657 and 314..... 16

Congressional Act..... 16

Re Cases Cited, Record Page 4..... 16

Code of Alabama 1923 and 1940..... 16

Appellant's Bill of Exception, Record Page 36 to 39..... 16

Re Herbert 104, Fed. 322..... 17

Re Henry Lewis, 267 U. S. 467..... 17

Re McCollough vs. Parks, 199 Sou. 750..... 18

INDEX (Continued)

Page

Security Mortgage Co. vs. Powers, 278 U. S. 149 and 267 U. S. 467 ..... 18, 19

Record Page 73 Re I. C. R. R. vs. Johnson 65 L Ed 459 19
Re 87 Sou. 866 19

Re Kehler 162 Fed. 674 19

Re Ward 161 Fed. 755 19

Re Brown Shoe Co. vs. Wyn, 281 Fed. 807 20

Record Page 12, 13, 70, 76 and 78 for Nullification of Claimed Judgment for Mrs. L. C. Fletcher and Trustee 20

Notice to Trustee, Jan. 5, 1929, Record Page 79 20

Manhattan Property vs. Irvin Trust Co., 291 U. S. 320 20
(Also see B of said Case)

Record Page 79 21

Re 182 U. S. 438 21

Record Page 79 Johnson vs. Star, 287 U. S. 527 21

Re Lean vs. Hunt, 292 U. S. 234 21
294 U. S. 648 21
294 U. S. 442 21

Re 25 Sou. 2nd 262

Section 237 A and B.

Rec. Page 86, Evidence of Ed Wetzel 22

Rec. Page 86 and 89, Evidence of C. B. Coleman, Referee
Rec. Page 86 to 109, Evidence
Rec. Page 79, Tauble, Scott, Kitzmiller vs. Fox 21

Evidence of Ed Wetzel in District Court, $20,000 Pleaded 23, 24

Re Mason vs. Dean, 31 Fed. 2nd 945 26

Record Page 31, 32, 33 and 34 25

Section 10 B, Record Page 31 26

Record Page 31 26

Petition and Schedule were withdrawn Dec. 11, 1928
Re 294 and 292 U. S. 648 and 426 23

Record Page 97 and 98 23

IN THE

United States Supreme Court

OF

America

ON PETITION OF CERTIORARI,

The Court of Appeals, 5th Circuit.
of Ed Wetzel.

ED WETZEL, *Alleged Bankrupt.*

Vs.

WM. F. SCHAEFER, *Alleged Trustee.*

The Petition and Schedules filed Nov. 13, 1928, by L. C. Albright were withdrawn on December 11, 1928. Under Section 3 or 21, of Bankrupt Act, Sub Section C and E in all respects complied with Section C of Act 21.

On Petition for Certiorari under Rule 38 and Amendments May 22, 1939, Appendix to Rules, and especially Rule 38 B and Sec. 237 A and B as amended.

Ed Wetzel petitions the United States Supreme Court to require the United States Circuit Court of Appeals for the 5th Circuit to send the records, the opinion or decision, the briefs and pleadings up to the Supreme Court of the United States for examination.

Notice has been mailed to William F. Schaefer, alleged trustee, c/o C. B. Coleman as Referee, Birmingham, Alabama, of Petition of Certiorari herein, the Court of Appeals, 5th Circuit, refused or failed to give a hearing on any of the errors assigned.

ED WETZEL,
Movant for Certiorari of Good Character.

ASSIGNMENT OF ERROR

By

COURTS BELOW.

The District Court of Birmingham, Alabama, did not consider or decide any of Defendant Ed Wetzel's pleadings except that plea to jurisdiction, a copy refiled in 1943 and the Court of Appeals did likewise and refused to give a hearing on said points of errors assigned.

There is no record of any minute entry in the record and there is no judgment of the claim in the record. As elsewhere, then is no Judgement. There is no Judgement as claimed in Existence and the alleged Judgement was nullified by the Jefferson County, Alabama, Equity Court, which decree of the State Court must be construed in the same manner and effect as if it was a Judgement or decree and had been rendered or passed in a Court of the United States. Since the State Equity Court was the highest Court and the last Court, no appeal was taken or other action and cannot now be taken.

The Congressional Act amended May 22, 1939, page 8 of Rule, Section "C" of same, a Writ of Errors or "D" Writ of Certiorari, a stay may be granted by a Judge of the Supreme Court.

This Certiorari is taken under Section "B" of Rule 38 and Appendix Rules as amended May 22, 1939.

The Writ of Error intended to bring any judgement or Decree before the Circuit Court of Appeals, 5th Circuit, for Review shall be filed within three months from Judgement or Decree of Court. Decree was first rendered November 21, 1947. Rehearing denied December 28, 1947. Writ of Error declined December 28, 1947. In the Circuit Court of Appeals, 5th Circuit, the Assignment of Error and Pleading had been presented to the Clerk of the Court of Appeals, 5th Circuit, December 13, 1947, and was returned unacted upon, December 28, 1947, and is attached herewith. The Decree of the State Equity Court of Jefferson County, Alabama, has the same effect as if it were made by a United States Court and must be so construed. See Record page 12 and 13 and page 70 of the record for Decree of Equity Court nullifying the alleged judgement claimed by Mrs. L. C. Fletcher and trustee.

The accused's evidence cannot be disregarded by Judges or Juries. He is a competent witness for himself.

The Petitioner is being held without jurisdiction of the court that sent him to Kilby Prison. Opinion of Court of Appeals, 5th Circuit.

In The

UNITED STATES SUPREME COURT

of

AMERICA

ED WETZEL, *Alleged Bankrupt Appellant.*

Vs.

WM. F. SCHAEFER, *Alleged Trustee.*

BRIEF OF ED WETZEL

and

ASSIGNMENTS OF ERROR MADE BY

United States Circuit

Court of Appeals,

5th Circuit.

Certiorari application is made.

The alleged trustee did not assess for taxes or pay any State taxes on property he claims for more than 17 years and all is held under tax titles superior to any other liens for $1,850.00 against trustee which must be paid first. Alabama State laws make tax liens superior to any other claims.

Code of Ala. 1923 and 1940.

The Circuit Court of Appeals, 5th Circuit, erred in disregarding Ed Wetzel's withdrawal of December 11, 1928, the Original Petition and Schedules alleged filed by L. C. Albright, November 13, 1928, without authority, (Record—— page 36 and 39). Bill of Exceptions filed January 17, 1929, for review and Petition for Review filed January 17, 1929, (Record—— page 168-169), on which this appellant has never been heard by any Court to this date, January 30, 1948, by District Court or Court of Appeals for 5th Circuit and is assigned as error by Certiorari.

The Circuit Court of Appeals, 5th Circuit, erred further and so did the District Court of Northern District of Alabama, and the Referee in holding that Ed Wetzel was present at the hearing of M. Wunder, 6th of May, 1929, when Ed Wetzel was not in Jefferson County, Alabama, on said date. This is assigned as error by certiorari.

Cases cited, all of which were disregarded and ignored by Court of Appeals, 5th Circuit, and each citation is assigned as error on Certiorari.

The validity of a claim is determined under the local laws of the State where the case arose, must control. (Record ..... page 3).

Errickson v. Richardson, 86 Fed. 2nd 963.

The Writ of Errors shall have the same effect as if the Judgment or Decree had been rendered or passed in a Court of the United States:

A Congressional Act and
Representation enactments.
Sec. 237 "A" and "B" of Amendments
May 22, 1939, Supreme Court Rules, Page 1.

In part a final judgement of decree in any suit in the highest Court of a State in which a decision in the suit could be had, where is drawn in question the validity of a statute on the United States and the decision is against the validity; (or where is drawn in question the validity of a statute of any State,) etc., it may be reviewed by the Supreme Court of the United States upon a Writ of Error or Certiorari and the Writ of Error shall have the same effect as if the Judgement or Decree had been rendered or passed in a Court of the United States, etc.

Section 237 "A" of May 22nd Amendment, (22), 1939 (last 1943 is not usable because not in effect). The Amendment is to define jurisdiction of the Circuit Court of Appeals and for other purposes.

Section 8 "A" of same allows three months from the date of Decree, final of the Court of Appeals to appeal on Writ of Error application to the Supreme Court. See also Sections 8 "B" and 8 "D".

See Sections 9 and 10 of Amendment, May 22, 1939, cannot be dismissed but must be corrected by the Court so that it may be considered corrected.

So much of Sections 24 and 25 of the Bankrupt Act as regulate the mode of review by the Supreme Court in proceedings, controversies and cases therein named is amended.

The Petitioned Schedules were withdrawn December 11, 1928, (Record pages 36, 37, 38, and 39), and $20,000 and interest was pleaded since March 2, 1916. This evidence of September 16, 1945, is wholly indisputed. Petitions and Schedules were withdrawn all fully gone over and described in the Record and to pleadings and Writ of Error attached. Writ of Error is here claimed on Certiorari.

ASSIGNMENT OF ERRORS

Made by

COURT OF APPEALS

5TH CIRCUIT

for

Petition of Certiorari of

Ed Wetzel,

and Brief.

The Court of Appeals, 5th Circuit, erred in disregarding Ed Wetzel's withdrawal on December 11, 1928, the original Petition and Schedules allegedly filed by L. C. Albright, November 13, 1928, without authority as instructed by E. H. Dryer, a Referee. (Record ..... pages 36 to 39). Bill of Exception filed January 17, 1929, and Plea to Jurisdiction for Review and the Petition for Review is of Record pages 168 and 169, filed 11:35 A.M., January 17, 1929, on which Ed Wetzel has not been heard to this date, 1948, by the District Court nor by the Circuit Court of Appeals, 5th Circuit.

This is assigned as Error and excepted to on Certiorari.

The Court of Appeals, 5th Circuit, further erred as did the District Court for the Northern District of Alabama and the Referee in considering that Ed Wetzel was present at the hearing of one M. Wunder on May 6, 1929, when Ed Wetzel was not in Jefferson County, Alabama:

This is assigned as Error and excepted to on Certiorari.

Cases cited all of which were ignored by the Court of Appeals.

The validity of a claim is determined under the local laws of the State where the case arose must control.

Erickson v. Richardson
86 Fed. 2nd 963

Error assigned all Citation, etc. Errors are assigned as for Certiorari.

Want of jurisdiction is a question that the Court should consider whenever or however raised. This was disregarded by the Court of Appeals, 5th Circuit, and is assigned as Error and is excepted to. Record page 3: Plea of jurisdiction was filed December 11, 1928, and ignored by all Courts. Writ of Error claimed on Certiorari.

Columbus Realty Co. 101 Fed 965
Re: Marks Holding Co. 296 Fed. 516
Re: Sidinger v. Hargentine, 244 Fed. 719.

The striking Bankrupt's answer denying Bankruptcy and the refusal to allowed or permit Amendment is an abuse of Discreation assigned as Error and excepted to January 17, 1929, and December 11, 1928.

Record ..... Page 3
Sharland Co. v. Conklin
30 Fed. 2nd 489

Writ of Error is assigned on Certiorari.

Record ....Page 5. A Judgement must be entered on the minutes of the Court. The Judgment is only proven by the minute entry and unless formally entered it is not a Judgement. Because this was ignored by the Court of Appeals, 5th Circuit, it is assigned as Error by Writ of Errors and is excepted to on certiorari.

McCoullough Parks,. 199 Sec. 750

The jurisdiction of a State Court is upheld when a judgement creditor holding the alleged of their debtor have instituted suit in the State Courts to enforce the alleged lien more than four months before the Bankruptcy of the debtor. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as Error and is excepted to as Writ of Error, Certiorari.

Straton v. News, 283 U.S. 318.

Mrs. L. C. Fletcher filed suit in the State Equity Court of Jefferson County, Alabama, to test the validity of the alleged judgement February 17, 1918. Mrs. L. C. Fletcher made Ed Wetzel a respondent in said case in 1920 and Ed Wetzel within the time allowed pleaded that there was no such Judgement as claimed and pleaded set-off of $20,000.00 and interest 8%, semi-annually, since March 2, 1916. Mrs. L. C. Fletcher lost the case in the Equity Court and Wetzel pleaded other costs and expenses. (See Record ..... page 12 and 13 for Equity Court Decree and page 70.) The Petition and Schedules were withdrawn December 11, 1928, and $20,000.00 and interest on same was pleaded

since March 2, 1926, was pleaded in District Court at Birmingham, September 16, 1945, and against Trustee. (Disregarded).

The Court of Appeals ignored the Decree of the State Equity Court in nullifying the claim of Mrs. L. C. Fletcher and the trustee. (See for Decree—Record ..... Pages 12 and 13 and 70; 45 and 46.) This assigned as Error and excepted to for Certiorari.

A contingent claim or one pending in a Court undecided is not provable or allowable in Bankruptcy. This was ignored by the Court of Appeals and is assigned as Error and excepted to for Certiorari.

Straton v. News, 283 U. S. 318.

Where Bankrupt laws deal with property rights which are regulated by State laws, the Federal Courts in Bankruptcy will follow the State Courts. This was ignored by the Circuit Court of Appeals, 5th District, and Assigned as Error by Writ of Error and excepted to on Certiorari. (1933)

Re 287 U. S. 77
Re 274 U. S. 1

The extent and validity of a debtor's obligation to pay a creditor is that of the local State laws which govern debts and the Construction given by the Courts of the State of it's statutes relating thereto. This was ignored by the Circuit Court of Appeals, 5th Circuit, and assigned as Error by Writ of Error and excepted to on Certiorari.

(1932) Security Mtg. Co. v. Powers
278 U. S. 149

The contingency of the bankrupt's obligation may be such as to render the claim upon it incapable of proof. It may be one beyond the control of the creditor and dependent upon an event so fortuitous as to make it uncertain whether liability will ever attach or the contingency may be such as to make any valuation of the claim impossible even if thought liability had attached. This was ignored by the Circuit Court of Appeals, 5th Circuit, and assigned as error by Writ of Error and excepted to on Certiorari.

Record — Page 4 and 69

Maynard v. Elliott

283 U. S. 273

A claim for unliquidated damages arising out of pure tort which neither constitutes a breach of an express contract nor resultation any unjust enrichment of the tort fessor so as to form the basis of an implied contract for injury is not provable in Bankruptcy. This was ignored in the Circuit Court of Appeals, 5th Circuit, and is assigned as error by Writ of Error and excepted to on Certiorari.

Record — Page 4.

Schall v. Conar, 251 U. S. 239

The State Court has complete jurisdiction to determine the controversy of a claim and the trustee is bound by it. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error by Writ of Error and excepted to on Certiorari.

Re: 142 Fed. 2nd 245.

The Bankrupt Court must consent to determination by a State Court to determine controversy with respect to liens and to property in Bankrupt Court's possession. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error by Writ of Error and excepted to on Certiorari.

Magnolia Petroleum Co.

309 U. S. 657

314 U. S. .....

Ed Wetzel has never consented to proceedings in Bankruptcy and consent is necessary. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error by Writ of Error and excepted to on Certiorari.

Cases cited — Record page 4.

Excepted to for Certiorari.

The State Equity Court nullified and dismissed the claim of Judgements by Mrs. L. C. Fletcher the trustee and his lawyer. Dismissed out of Court the Claim of Judgement and charged complainants with costs. (Record — Pages 12-13- and 70). Assigned as Error on Certiorari. This was ignored by Court of Appeals, 5th Circuit, and is assigned as error, Writ of Errors claimed and excepted to an Certiorari.

See appellants Bill of Exceptions — Exhibit No. 2 Record — page 36 to 39 incl., in which he has not been heard by any Court to this date. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Errors claimed and excepted to on Certiorari.

He was not heard on this assignment of error by the District Court of the Northern District, nor the Court of Appeals, 5th Circuit, and is excepted to and claim of Writ of Errors.

The Bankrupt has the right to withdraw the Petition and Schedules prior to the time a claim is filed and a trustee appointed and against the objection of Creditors. Record — page 42. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Errors claimed and excepted to on Certiorari.

Re: Herbert 104 Fed. 322
Section 3 or 21 of Act. Sub. E as in effect 1928-29

Record — Page 42 as in effect December 11, 1928. This was ignored by the Court of Appeals, 5th Circuit, and assigned as error, claim of Writ of Errors and excepted to on Certiorari.

Unliquidated claims before Bankruptcy are not provable in Bankruptcy. Record — page 69. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, claim of Writ of Error and excepted to on Certiorari.

Re: Henry Lewis 267 U. S. 467

Record — page 71.

There is not now or ever has been any minute entry on the Court minute records of the alleged Judgement by Trustee in the State Court. This assigned as error— if no minute entry, there is no Judgement. Writ of Error claimed and excepted to on Certiorari.

The Judgement must be entered on the minutes of the Court. Judgement is only proven by the minutes and unless formally entered it is not a judgement. This was ignored by the Court of Appeals, 5th Circuit, and assigned as error, Writ of Error claimed and excepted to on Certiorari. Record — pages 72 and 73.

McCollough v. Parks
199 Sou. 750
209 Ala. App. 610

If at the time of Bankruptcy a suit or proceeding is pending in a State Court over which the Federal Court otherwise has jurisdiction, the adjudicator does not oust the State Court of Jurisdiction and the State Court can hold its jurisdiction to final judgment of a controversy. The extent and validity of the debtor's obligation to pay a creditor is that of the local laws of the State which governs the debts and the construction given by the Courts of that State of its status relating thereto. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error. Writ of Error claimed and excepted to on Certiorari.

Record — page 72 and 73
(1928) Security Mortgage Co. v. Pawors
278 U. S. 149
and some 50 other citations
on this point.

In Bankruptcy there is a difference between a pure Tort in an alleged Judgement before Bankruptcy and the Judgement contingent such claims remains unliquidated at time of Bankruptcy. The unliquidated claim

is not provable. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Error claimed and excepted to on Certiorari.

Re: 267 U. S. 467

If the Petition was filed as claimed by opposition, by Ed Wetzel when he was non compis mentis, and he had no lucid intervals for several weeks nor could he distinguish right from wrong, nor could he read or understand the alleged petition, nor was it read to him, and in any event could not understand or know what was being done, and such persons can avoid the instrument so obtained. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Error is claim, and excepted to on Certiorari. Record — page 73.

Re: I. C. R. R. v. Johnson
65 L Ed 459 and 788
Re: 87 Sou. 866

Such a person cannot be adjudicated a Bankrupt. Writ of Error claimed.

Re: Kehler 162 F 674
Re: Ward 161 F 755.

The Bankrupt Court cannot review or annul a judgement of the State Court which subjects a lien or annuls a lien or property over which the State Court acquired jurisdiction prior to Bankruptcy proceedings against defendant and such judgement or decree is conclusive as to such defendant and the trustee in Bank-

ruptcy. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Error is claimed and excepted to on Certiorari. Record Page — 73.

Brown Shoe Co. v. Wyn
281 Fed. 807.

And see Record — pages 76 to 78; 12, 13 and 70 for dismissal of Mrs. L. C. Fletcher's claim, — out of Court November 23, 1935. This was ignored by the Court of Appeals, 5th Circuit, and is assigned as error, Writ of Error is claimed and excepted to on Certorari.

The notice given C. L. Phillips as trustee, January 5, 1929, is equal to a lis pendens notice. He was an agent for Mrs. L. C. Fletcher that no debts be provable in Bankruptcy arising out of a claim which becomes effective only at the Claimants option after the inception of the proceedings, the fulfillment of which is contingent on what may happen from month to month or upon the end of the original term such is not the equivalent of an agreement nor a debt certain.

Record — page 79.

This was ignored by the Court of Appeals, 5th Circuit, and is assigned as an error, a Writ of Errors is claimed, and excepted to on Certiorari.

Manhattan Property v. Irvin Trust
291 U. S. 320
Also see B of said case.

The Court of Bankruptcy has jurisdiction to order restoration of dividends as part of the regular proceedings in Bankruptcy.

Record — Page 79

This was ignored by the Court of Appeals, 5th Circuit and is assigned as error, a Writ of Error is claimed, and excepted to on Certiorari.

Re: 182 U. S. 438

There is no provision in the Bankruptcy Laws in conflict with the State laws allowing or providing for the discharge of the debts of a creditor who elects to participate under a general claim although the assignment constitutes under 3 "A" (5) an act of Bankruptcy. Writ of Error assignment claimed, and excepted to on Certiorari. Record — page 79

1933 Johnson vs. Star
287 U. S. 527.

Courts of Bankruptcy are Courts of Equity.

Record — page 79
1934 Lean Co. V. Hunt
292 U. S. 234
294 U. S. 648
1935 294 U. S. 442

A claimant of non-existing liens has a right to litigate in the State Court to avoid of liens in Bankruptcy. A Writ of Error claimed, excepted on Certiorari.

Record — page 79
Tauble, Scott, Kizmiller v. Fox
264 U. S. 426
Also see 291 U. S. 178 L Ed

The $20,000 and interest 8% since March 2, 1916, was pleaded against Mrs. L. C. Fletcher and trustee in the Equity Court of Jefferson County, Alabama, and the Decree (Record — pages 12, 13; 70, 76, 78) is a Judgement for Ed Wetzel. It is final and resjudicato in Bankruptcy. (See: Gilmer v. Grant 6 Division No. 388, March 1946, Supreme Court of Alabama 25 Sou. 2nd 262), and must be termed as if by the United States Court. Sec. 237 A and B of Rules adopted effective February 27, 1939. Error assigned, excepted to Writ of Error by Certiorari.

Record — page 86. Ed Wetzel testified in District Court:

In the first place the Petition and Schedules were withdrawn on December 11, 1928, and this is wholly undisputed, and is excepted to assigned Writ of Error.

Record — page 89. Stephen B. Coleman as Referee swore upon questions asked:

Q. Did you go to the State Court House here to investigate and see if there was a minute entry on that judgement of Mrs. L. C. Fletcher and trustee?

Assigned as Writ of Error by Certiorari.
Record — page 86

A. Yes, sir, I did.

Q. Did you find any minute entry?

A. No, sir.

Claimed by Writ of Error on Certiorari.

Record — Page 97 and 98.

Q. Withdrawn December 11, 1928. After that there wasn't any Petition in Bankruptcy, was there? You withdrew it.

Writ of Error claimed—Certiorari.

A. I withdrew them, yes. I gave Mr. Phillips notice just as quick as he was appointed that the Petition had been withdrawn.

(Writ of Error Claimed on Certiorari)

Q. After you withdrew your Petition then you didn't have any other further Petition in Bankruptcy, that was the end of it?

A. Yes, so far as I am concerned.

Writ of Error assignment—Certiorari.

Q. Did you file another petition after that?

A. No, sir.

Writ of Error assignment—Certiorari.

Q. Who marked out the printed form in that affidavit?

A. I did. It was before it was filed.

Q. Before it was filed?

A. Yes, sir.

(Writ of Error claimed—Certiorari.)

Record — page 101

A. Mr. Oberdorfer was down here once, he said would take the short cut. I told him that the petition

was withdrawn and all about it under the Bankrupt Act III "C" and "E" as in effect December 11, 1928, therefore the District Court or the Referee had not jurisdiction after December 11, 1928, to make orders.

(Writ of Error assigned)

Record — Page 103

Q. Isn't that a correct copy of the Petition you filed in Bankruptcy?

A. I know nothing about it.

(Writ of Error claimed—Certiorari)

Record — Page 104

Q. Now isn't it a fact that in connection with this other Petition you filed, this Exhibit "A" as shown here setting out the alleged judgement?

(Writ of Error Claimed—Certiorari)

A. I didn't file nothing and there is no minute report in Record to show any judgment.

(Writ of Error is claimed here on Certiorari)

Record — Page 105

A. They were copies gotten from the Court Clerk furnished by the Clerk. They are not certified.

Writ of Error is claimed)

(Because all are made from forged copies—

or no copies at all are forgery).

Record — page 107

Q. You have been convicted of Forgery at Bessemer, haven't you?

A. Yes, without jurisdiction of that Court. (See opinion of Court appeal)

(Writ of Error is claimed here—Certiorari.)

Record — Page 109

Q. You signed this paper and referred to it?

A. No, sir.

(Writ of Error is claimed here—Certiorari.)

A. They claimed they had a petition and I claimed that they had none and they failed in it. They did not have a petition or schedules in 1941 or 1942 and in 1946 they got petition and schedules which are self made petition and schedules and constitute forged papers or petition.

> The evidence of the accused cannot be ignored or disregarded by Judges or Jury. Alabama Laws (late laws).

Since plea of jurisdiction of Ed Wetzel, alleged Bankrupt, was filed in the Referee's Court and before the beginning December 11, 1928, and in (Re: Maston v. Dean 31 Fed. 2nd 945; Collier 14 add Sec. 1) said Bankrupt Courts being without jurisdiction of the original proceedings, all that is done under it is void. The assignments vacate all that is done. Sales invalidate. All titles worthless.

Error is assigned: Mason v. Dean
31 Fed. 2nd 945.
See Record — pages 31 and 32, 33 and 34
And Sec. B 10 Rec. Page 31.
Re: 294 U. S. 648
292 U. S. 426.
Assigned as Error on Certiorari.

See Record — pages 164, 165, 167. Petition for Review January 17, 1929.

See Record — pages 36 to 39 inclusive—for Exceptions—filed 11:35 A.M. Also filed was Plea to Jurisdiction of the Bankrupt Court at Birmingham, Alabama.

Ed Wetzel testified September 16, 1946, plea to Jurisdiction had set-off and Sec. 10B of Court's Rule is in pleading that L. C. Albright testified that he filed the Petition and Schedules on order of Referee Dyer who told him to file it and that Ed Wetzel was not present and that Ed Wetzel objected to the filing and that Albright went on and filed the petition.

Exceptions as assigned are errors
Claimed by Certiorari.

And fourth that Argie R. Mays on December 11, 1928, told Ed Wetzel that he knew Ed Wetzel did not file the Petition, that he had not seen Ed Wetzel before that day (Record — page 90, 91, 93)

Equity Court of Alabama dismissed Mrs. L. C. Fletcher's claim of Judgement out of Court and this is in evidence of September 16, 1945, and is assigned as error.

Petitioner Ed Wetzel objects to any attorney for the Trustee appearing for him in this Court or cause because the Record fails to show under Supreme Court Rule XLIV which is appointment of attorney for the trustee in City (Birmingham, Alabama) where District Court was held had 259,678 population in 1928 and said rule is:

> . . . In any District in which there is a city population of 250,000 or more, NO attorney for trustee shall be appointed except upon order of the court, (meaning the District Judge) and is only provided for in Supreme Court Rule XLIV as promulgated January 13, 1930. (This rule was equal to law)
> Exception is reserved for Certiorari.
> Besides the Attorney falsified most of his arguments, brief and pleadings.)

Rule 11 — Court of Appeals, 5th Circuit.

Appeals in proceeding and controversies arising in proceedings in Bankruptcy taken under Section 24 and 25 of the Act as amended June 22, 1938, in respects not provided for in said Sections or by General Order in Bankruptcy shall be governed by Rule for Appeals in civil actions.

The original Petition and Schedules were withdrawn on December 11, 1928, under Section 3C upon proof of not insolvent at time alleged petition was filed and "E" authorized to withdrawals of Petition by alleged petitioneer as in effect at said time.

ED WETZEL . . . is of good Character
Route No. 3, Box 115,
Montgomery, Ala.

In The

United States Supreme Court

of

America

ED WETZEL

Alleged Bankrupt

by

Certiorari

or

Appeal Writ of Error

vs.

WM. F. SCHAEFER

Trustee

for

Alleged Bankrupt

THE BRIEF AND ARGUMENT

for

ED WETZEL

On the above case

INDEX TO CASES CITED

Re: Adams, 53 Fed Supp 982.

Bankrupt Act III—Sub. C and E as in effect 1928-1929. Withdrawal of a Petition.

Re: Central Foundry Co. v. Hardin, 82 Fed. 2nd 692.

Re: Chasen, 20 Fed. Supp. 244.

Re: Cohn v. Drennen, 19 Fed. 2nd 642.

Re: Equity Courts Decree, Record page 145, 146—12 and 13. Exhibit A. B. C. and E. of appellie Record, Page 140-143 are forgeries; name of Ed Wetzel is a forgery; all are forgeries and falsifications. Nobody admitted that they wrote them.

Re: Erickson v. Richardson, 86 Fed. 2nd 963.

Re: Eisenberg, 117 Fed. Page 786.

Re: Guardian Building & Loan, 53 Fed. 2nd 412.

Re: Govenor Homes, 65 Fed. 2nd 378.

Re: George Lamper, 18 Fed. 2nd 633.

Supreme Court Rule XLIV.

Rule 11 of Court of Appeals.

Hyatt v. Wallace, 97 Fed. 2nd 320.

Re: Johnson v. Star, 287 U.S. 527.

Re: Lincoln v. Lafont, 37 Fed. Supp. 499.

Re: Marvin, 20 Fed. 2nd 937.

Re: Marynew, 31 Fed. Supp. 175.

Re: Murphy and Hufman, 211 U.S. 562.

Re: New Lott Sash Co., 3 Fed. Supp. 570.

Re: Obrien Iron Works, 58 Fed. 2nd 961.

Re: Oden v. Alleway, 152 S.E. 148.

Re: Sitz Hotel Co. v. Beaver, 55 Fed. 2nd 720.

Republic Co., 109 Fed. 2nd 167.

Straton v. News, 283 U.S. 318.

Re: 276 U.S. 36.

Re: 287 U.S. 527.

Re: 274 U.S. 1.

Bankrupt Act 68 A—as in effect 1928, 1929.

Rule 10 B of District Court of Birmingham, Ala.

Re: Day, 22 Fed. Supp. 946.

Re: Day, 22 Fed. Supp. 956.

Re: Gilisby Tire Co., 54 Fed. Supp. 336.

Re: Potts, 42 Fed. 2nd 886.

McCollum v. Hamilton Nat'l. Bank, 303 U.S. 354.

Re: 13 Fed. 2nd 895 (Rysin).

R. C. Sparks Co., 46 Fed. 2nd 497.

Re: 236 U.S. 549.

U. S. Fidelity Co. 28 NT 2nd 958

Security Mortgage Co. Power, 278 U.S. 149.
182 U.S. 438.

Manhattan Property v. Irvin Tr. Co., 291 U.S. 320.
The Equity State Court is shown at Page 8 hereof. 11
Plea to jurisdiction of the Court to proceed were filed and presented to Court Referee prior to the time claim was filed or trustee appointed or proceedings begun, and denial of contents of petition prior to proceedings begun made and Petition and Schedules were withdrawn prior to time claim was presented or filed. Withdrawal was under Section 3 of Act, Sub. "C" and "E" in effect at that time. All cases cited or mentioned on Petition for Certiorari are made part hereof for consideration.

BRIEF AND ARGUMENT

The undisputed evidence on September 16, 1946, in the District Court of the Northern District of Alabama was:

In the first place the original petition and schedules filed November 13, 1928, were withdrawn by Ed Wetzel on December 11, 1928, under the Bankruptcy Act, Section No. 3, Subsection "C" and "E" and was a complete defense. The pleas of the jurisdiction of the Court to proceed in the case was on December 11, 1928, filed in the said Referee's Court with said Referee in charge of the case.

Record. Page 6 and 7
Page 8 and 9

Since the Petition and Schedules were withdrawn December 11, 1928, the District Court of Bankruptcy for the Northern District of Alabama did not have any jurisdiction and all subsequent proceedings and orders made were without jurisdiction and all are a nullity and void.

Shelton v. Syding, 102 SE 83
Mason v. Dean, 31 Fed 2nd 945
Collier 14 Add. Sec. 1

JURISDICTION CANNOT BE CONFERRED BY CONSENT.

Before the Bankrupt Court has jurisdiction there must be a valid voluntary petition that must state a lien exists.

Record. Page 26

Internation Shoe Co. v. Perkins, 292 SW 996.

The Bankruptcy Court being without the jurisdiction of the original proceeding, all that is done under it is void. The assignments vacate all sales, invalidates, titles worthless. Record. Page — 31.

Mason v. Dean, 31 Fed. 2nd 945
Collier, 14 Add. Sec. I
70 Fed. 2nd 929
254 Fed. 442

Canute Steamship Co. v. Pittsburg, W. Va. Coal
263 U.S. 244
Record. Page 31.

The new Section 77 has several provisions which are significant when considering the various objections and the Court's jurisdiction.

Re: 294 U. S. 648
Record. Page — 31

Contractual Claims cannot be impaired.

Re: 292 U. S. 426
Record. Page — 31

The overruling by the Court of Appeals and the District Court of the Set-off Claims against Mrs. L. C. Fletcher and the trustee is in violation of the Constitution of the United States. Record. Page—31.

A Judgement must be entered on the minutes of the Court. The judgement is only proven by the minutes and unless formally entered it is not a judgement. Record. Page 5.

McCollough vs. Parks
199 Southern 750

Movant now demands in verbatim the minute entry of the alleged judgement and claimed by the trustees and signed as correct by the Judge or the Clerk of Courts, (giving details). Record. Page 33.

McCollough v. Parks
199 Southern 750

The District Judge cannot act as such or exercise their judicial power and function outside their respective Districts. Record. Page 34.

Primrose Chemical v. Fulton Steel Corp.
254 Fed. 454

Re: 169 U.S. 218
Re: 108 U.S. 401

The Courts may not seize property without jurisdiction and then claim jurisdiction over the property because it is in the possession of the Court. (See Record pages 6 and 7 . . . Court had no jurisdiction.) Record . . . Page 34.

Howas v. Nat'l. Bank
229 Fed. 51

The Referee erred in disregarding the Petitioner's pleadings to him presented on December 11, 1928, and that the Petition and Schedules was withdrawn December 11, 1928. Record . . . Page 36.

The following objections are made by Ed Wetzel to trustees:

EXHIBITS

Record — Page 5

Exhibit C. Record . . . Page 140.
"A" is made from a forged or self-made copy and is a false claim.

Exhibit D. Record, Page 141. Is made from a forged copy or self-made copy by claimant and is a false claim.

Exhibit E. Record, Page 142—143 and 144.

Made from forged originals or no originals and alleged copy of the record was made from a forged copy.

Exhibits F-G-H-J-K and O.

The affidavit of Argie R. May is almost all perjury and none are relative at this stage of certiorari proceedings or appeal.

The claim of Mrs. L. C. Fletcher was not provable in Bankruptcy at all because of its contingency, since 1918 when instituted in the Equity Court of Jefferson County, Alabama, and the claim of set-off, mutually agreed to by Mrs. L. C. Fletcher to pay Ed Wetzel, $20,000.00 and interest on same at 8 per cent payable semi-annually from March 2nd, 1916. This claim of set-off now amounts to $180,800.00 and the interest on same grown at the rate of same at $1,100.00 per month and the claim is presented here with interest added to date of payment. Record . . . Page — 7.

I, Ed Wetzel did not file any petition or schedules in the District Court of Birmingham, Alabama. All

allegations made to such effect are branded as false and untrue. Record . . . Page — 9.

Now as to the filing claim with trustee by alleged Bankrupt, on January 5, 1929.

First the trustee was legally and properly notified both verbally and in writing, January 5, 1929, that the petition and schedules were withdrawn as of December 11, 1928. Record . . . Page — 10.

The United States Supreme Court, Rule 21 in effect January 5, 1929, is Sub-section I,—Proof of debt received by any trustee shall be delivered to the Referee to whom the case is referred. Record . . . Page 10.

If the trustee does not deliver such proof of claim to the Referee, the creditor shall not be charged with the failure.

Orcutt v. Green

204 U.S. 96

Record . . . Page — 10.

It is not necessary that proof of claim by Bankrupt shall have been filed with the Referee. It is sufficient if the claim is filed with the trustee.

Re: Derby 18 Fed. Supp. 995.

Record . . . Page — 10.

A proof of claim delivered to the trustee in Bankruptcy within the limited time of six months after adjudication is a sufficient filing within the meaning of this Section.

Re: Ferlamb Co. 199 Fed. 278

Re: Lathrup Haskins Co. 197 Fed 164

Record . . . Page — 10.

When proof of claim has been delivered to the trustee the claim is sufficiently filed and it is the duty of the trustee to deliver it to the Referee.

Re: Kessler 184 Fed. 51

Mutual debts need not arise out of the same transaction.

Re: Webber v. Wm. Mier Co.

169 Fed. 270

Please see transcript of evidence, September 16, 1946, for what Referee Coleman testified, to wit:

There was a motion filed by Mr. Ed Wetzel to withdraw the petitions, etc. Record . . . Page — 11.

Mr. Ed Wetzel denied filing the petition and that it was his; that he did not sign it, or file it or any petition, nor did anyone have authority to file it. Record . . . Page — 11.

Ed Wetzel asked the Court if he can ask Referee any questions. Court said you can ask him questions. (Record . . . Page — 11).

Q. Did you go to the State Court House here to investigate and see if there was a minute entry on the minute books or other books to sustain the claim of judgement by Mrs. L. C. Fletcher or trustee? (Record . . . Page — 11.

A. I did, yes sir.

Q. Did you find any minute entry?

A. *I did not.* (Record . . . Page — 11).

Record Page 12 and 13.

CIRCUIT COURT
10th Judicial Circuit
of Alabama

MRS. L. C. FLETCHER, *Complainant*
Equity Case No. 2553

vs.

J. W. WORTHINGTON, L. C. ALBRIGHT, MRS. K. WETZEL, ED WETZEL, JOHANN VOGEL, BENARD VOGEL, MATILA WINDER, EVA SCHRODER, *Defendants or Respondents.*

DECREE OF DISMISSAL

The State of Alabama,
Jefferson County.

The foregoing cause was regularly set on the printed docket on the 15th day of May, 1935, and upon the call thereof a request was made that the Court pass said cause and allow the parties thereto until the 30th day of September, 1935, for submission of said cause for a final decree. Upon said oral motion the Court

entered an order setting the cause for final submission within the time requested. It now being made to appear that said cause was not submitted for final decree in accordance with said order, the Court is of the opinion that said cause should be dismissed.

It is therefore ordered adjudged and decreed by the Court that said cause be and it is hereby dismissed out of Court and the costs accrued in said cause are hereby taxed against the complainant for the collection of which let Execution issue.

Done and ordered this 23rd Day of November, 1935.

E. M. CREEL,
Circuit Judge in
Equity Sittings.

Filed in office
November 23, 1935.

The State of Alabama,
Jefferson County.

I, G. H. Boyd, Register of the Circuit Court, Tenth Judicial Circuit of Alabama in Equity, do hereby certify that the foregoing is a true, correct, and complete copy of the Decree of Dismissal in the cause of Mrs. L. C. Fletcher, the complainant, v. W. J. Worthington, L. C. Albright, Mrs. K. Wetzel, Ed Wetzel, Johanna Vogel, Matilda Winder, Eva Schroder, Benard Vogel, respondents, rendered by said Court on this the 23rd day of November, 1935, all of which appears of record in this Court.

Witness my hand and seal of office this the 19th day of October, 1942.

G. S. BOYD, Register.

Notice is hereby given that Ed Wetzel, of Mulga, Alabama, was made a respondent by Mrs. L. C. Fletcher in said cause in 1920 that he pleaded and defended on the grounds that Mrs. L. C. Fletcher's claims were untrue and were false and he pleaded a claim against Mrs. L. C. Fletcher in set-off of $20,000.00 and interest 8 per cent from March 2, 1916. Notice is given that the decree is a judgement for respondent Ed Wetzel and is resjudicato in all courts and a bar to further actions by Mrs. L. C. Fletcher or her representative, it is final.

Recorded in Probate Office, Jefferson County, Alabama, Vol. 3377, p. 461, Birmingham; Vol. 281, p. 110, Bessemer.

I hereby certify that the above is a true and correct copy of the originals and that Ed Wetzel claims of Mrs. L. C. Fletcher and representatives, $180,800.00.

This writ of errors is made under Section 237 A. which provides that the writ of errors shall have the same effect as if the alleged judgement or decree had been rendered or passed in a Court of the United States, and B. of Section 237 provides for where is drawn in question the validity of a statute of any State on the grounds of its being repugnant.

Section 237 B.

Record . . . Page — 14.

The reply brief of Ed Pettus filed the 17th of December, 1946, where he stated appellant filed a volun-

tary petition in Bankruptcy in 1928 is a willful falsification, as are all of pages 14, 15, and 16 of the Record. (See Record Pages 18, 19, 20 and 21).

The Court appealed from has had no jurisdiction in Bankruptcy after the Petitions and Schedules were withdrawn on December 11, 1928, and all orders made without jurisdiction. Record . . . Page 20.

The claim of Judgement by Trustee for Mrs. L. C. Fletcher was filed in the State Equity Court in 1918 and litigated prior to alleged Bankruptcy were begun, and subsequently to November. On November 23, 1935, on which date the claim of judgement was by Mrs. L. C. Fletcher and representatives and the trustees was dismissed out of Court by the said Equity Court. The complainants simply could not establish the minute entry of the alleged judgement. The Court had a right to dismiss; the alleged Claim of Judgement was contingent from 1918 to 1935 on November 23rd. Record . . . Page — 20.

The Petition and Schedules alleged filed on November 13, 1928, were withdrawn under the Bankrupt Section 3 "E" and damages occasioned by such seizure, taking or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the Courts and paid by the obligers in such bond. Record . . . Page — 20.

As amended, May 27, 1926.

This petitioner claims from the trusty or his bond and surety the sum of all damages occasioned by such seizure, taking as detention of such property, counsel fees, costs, expenses and damages, a total of $243,400.00.

Record . . . Page — 20.

The order of adjudication is defective. It does not state on what day or year or when the alleged bankrupt shall appear nor that the claim created a lien.

Record . . . Page 22.

The petitioner in the Petition is Ed Wetzee and not Ed Wetzel. Neither is it signed by Ed Wetzel nor does it allege liability or willingness to be adjudicated a Bankrupt.

Re: 44 Fed. 2nd 564

Record . . . Page — 25

The Bankrupt Court must dismiss the Petition of its own motion at any stage of the proceedings even after adjudication when Petition is jurisdictionally defective.

Re: Day 22 Fed. 2nd 946

Record . . . Page — 25

Where defects appear affirmatively and also pleadings the Decree, 1928 adjudication, is a nullity. Record . . . Page — 25.

The alleged Schedule "A" was not signed by anyone nor was it annexed together, and the claim of Mrs. L. C. Fletcher is listed as a Claim of Judgement not in existence, invalid, and contingent, and barred by the Statute of Limitations and now subject to $172,-800.00 and interest at 8 per cent compounded semi-annually.

Record . . . Page — 25. From March 2, 1916, Jurisdiction Cannot be Conferred by Consent upon the Court. (Record — Page 25).

Before a Bankrupt Court has Jurisdiction of the Estate of one who has committed an act of Bankruptcy there must either be a voluntary petition having a provable claim and the petition must state a lien existed.

International Shoe Co. v. Perkins, 296 SW 996

Record . . . Page 26.

9076 A

State of Alabama,
Jefferson County.

Comes Ed Wetzel on the above entitled cause and appears specially for the purpose of pleading an answer to the same days that no notice or summons or complaint was served on him in person in said cause.

2nd. He specially pleads that the Court is without jurisdiction to present against him said cause. (Record Page 27).

4th. That Ed Wetzel owns and claims $20,000.00 and interest at 8 per cent semi-annually since March 2, 1916, as set-off and growing out of the transaction on which Mrs. L. C. Fletcher is founded or claimed, and some realty sold to her.

5th. That he is not guilty as charged or chargeable for anything in said complaint, because he was not the driver of said automobile, filed in open Court

with the trial Judge on June 19, 1916, and at the time he put the defendant on the jury in another room, 10:00 A.M. June 19, 1916. Record . . . Page 27 and 28.

Attached to and made part of the Review, September 16, 1946, in the District Court of the United States for the Southern Division of the Northern District of Alabama. Record . . . Page 28 and 29 and 30.

A Court does not have the power by judicial fiat to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators.

Stall v. Gottlieb
305 U.S. 165
Record . . . Page 30

Lack of jurisdiction can never be waived by parties nor can it be conferred on a Court by consent.

Clark v. Hennur & Myer
127 Fed. 228
Hotel Holding Corp. v. Acme Supply Co.
36 Fed. 2nd 353
Record . . . Page 30 and 31.
Re: Mason v. Dean 31 Fed. 2nd 945

Bankruptcy Courts under the Amendment have no greater authority than they had before.

Re: Lanquist 70 Fed. 2nd 929
Record . . . Page 31.
See 254 Fed. 442

Canute Steamship Co. v. Pittsburg, W. Va. Coal Co., 263 U.S. 244

Record . . . Page — 31

Also . . .

Re: 294 U.S. 648

292 U.S. 426

Contractual Claim cannot be impaired.

Re: 292 U.S. 426

The overruling by the United States Court of Appeals, Fifth Circuit, and the District Court of Alabama is in violation of the Constitution of the United States.

Section 10, (B) of the District Bankrupt Court of Birmingham, Alabama, is:

No payment by way of dividends, allowances or other distributive share of an estate in Bankruptcy or Delivery or Surrender of property or anything of value shall be made if the person or party to whom payment or delivery otherwise should be made is in default with or liable to or holds property belonging to the estate in Bankruptcy until such default or liability is discharged and such property surrendered. Such dividends, allowances, or distributive share shall be applied by the Court to or towards discharging such liability and only the excess over be paid to such person or party. (Rule 10B District Court.)

The above Rule 10B was not complied with and therefore the Trustee is by the Act required to re-

cover all money with interest 8 per cent to the date of payment and apply it to the Set-Off Claim which is $214,400. A lien is claimed on everything; claimed by the Trustee. He is by law bound by the decree of the State Equity Court. Record . . . Page 32.

It is an abuse of discretion to dismiss a plea to the jurisdiction of the Courts—

Record . . . Page — 32

Sharland v. Konglin

30 Fed. 2nd 489

Shelton v. Syding 102 S.E. 83

Tate v. Burges 226 Fed. 878

Since the Petition was withdrawn December 11 1928, under Section 21 of the Act. Sub-section "C" and "E" as in effect on said date and the Court's attention called to it many times and assigned as Error in the Bill of Exception filed the 17th day of January, 1929, and presented to the Referee in charge on December 11, 1928, the Court has been shorn of all jurisdiction to proceed.

Record . . . Page 32 and 33.

Re: Herben 104 Fed. 322

Re: Rieridon 95 Fed. Suppl. 454

Movement now demands a copy of the minute entry signed by a Judge of the Tenth Judicial Circuit of Alabama. The judgement is only provable upon a certificate from the minute records and if not in

the minute records it is not a judgement, and unless it is formally entered it is not a judgement.

McCollough v. Park
199 Sou. 750

The District Judge so appointed cannot act as such and exercise the judicial power and functions outside of their respective District.

Record . . . Page 34
Primrose Chemical Co. v. Fuller Steel Corp.
254 Fed. 454
169 U.S. 218
108 U.S. 401

Courts may not seize property without jurisdiction and then claim jurisdiction over the property because it is in the possession of the Court.

Record . . . Page 34
Howers v. 1st Nat'l Bank
229 Fed. 51
See 6th . . . Record — Page 34.

On Set-off and Counter Claims see . . .

Bramfield v. Trinidate Nat'l Banking Co
36 Fed. 2nd 636
Record — page 35

On the 11th Day of December, 1928, Ed Wetzel appeared before the Referee in charge of proceedings and proved that he was worth at the time of the

Petition being filed against him at least $66,000.00 and shows that he could borrow that much in cash on his property, and that is a complete defense.

(See Section C of United States Code Title 11 Chap. 3, Section 21 in Bankruptcy.)

Since the original Petition and Schedules were withdrawn by alleged Bankrupt on December 11, 1928, under the authority of Bankrupt Act 3 "C" and "E" which is it shall be a complete defense to any proceedings in Bankruptcy instituted under 1st of this Section to alegee and proven that party proceeded against was not insolvent as defined in this Title at the time of filing the Petition against him, and if solvency at such date is proven by alleged Bankrupt the proceedings shall be dismissed.

Section 3 "C" and "E" of the Act in effect December 11, 1928, a judgement rendered by a Court which had no jurisdiction of the subject matter is a nullity and may so be treated by all persons anywhere at any time and in any manner having no existence as a valid Judgement.

Shelton v. Syding 102 S.E. 83

Appellant now subjects to the Exhibits and the statement of the counsel made without any date and complying with Rule 23 of the Court and moves that the Trustee's attorney be charged with all costs so created by Rule 23, Section I. (See Equity Courts Decree of Jefferson County, Alabama.

Record — Page 12 and 13
Record — Page 45 and 46

Dismissing the Claim of Judgements, out of Court claimed by Trustee and his counsel and the Administrator, it is final, and is adjudicate in all Courts including the Bankrupt Court.

The alleged Judgement can only be proven by the minute entry in the minute books. If there is no minute entry it is not a Judgement.

McCollough v. Parks
199 Sou. 750

The Judgement must be entered on the minutes of the Court. The Judgements is only proven by the minutes and unless formally entered it is not a Judgement—

McCollough v. Parks
199 Sou. 750
Lookwood v. Thomas & Beachmoor
198 Ala. 301

The Minute entry of a Judgement must be attached to the Claim of the Judgement in Bankruptcy:

Not provable on account of Contingency in Bankruptcy. The Contingent Claim of the Bankrupt's obligation may be such as to render the claim upon it incapable of proof. It may be beyond the Control of the Creditor and dependent upon an event so fortuitous as to make it uncertain whether liability will ever attack. Or the contingency may be such to make any valuation of the claim impossible even though liability has attached.

Maynard v. Elliott
283 U.S. 273

Unliquidated claims before Bankruptcy are not provable in Bankruptcy.
Re: Henry Lewis 276 U.S. 467

A clear claim for liquidated damages arising out of pure Tort which neither constituted a breach on an Express Contract nor resultation of any unjust enrichment of the Tort feesar so as to form the basis of an implied contract for injury is not provable in Bankruptcy.

Scholl v. Conners
251 U. S. 239

When an action is brought in a State Court the Venue Statute of the State Court governs.

Gates v. Staple
43 Col. App. 2nd 492
111 P.C. 2nd 437
(Also See—142 Fed. 245v)

Argie R. Mays committed perjury in many respects in his evidence before the Court on September 16, 1946.

There is nothing in the general orders nor in the Bankrupt Acts that would prevent an alleged petitioner proceeded against without his consent to withdraw the Petition and Schedules charged to him. In

fact the 1926 Act, Section 3 Sub-sections "C," "D" and "E" clearly provided for the withdrawal of Petition and Schedules by Petitioner proceeded against without his consent. This was done on December 11, 1928, and the Court knew it and was notified and has since December 11, 1928, been acting without jurisdiction under the Bankrupt Act. The State Equity Court dismissed out of Court the allged Judgement Claim by Trustee, Mrs. L. C. Fletcher, her administrator, and it is adjudicato in all Courts including the Bankrupt Court of Birmingham, Alabama.

Trustee's Exhibit "E" is a forgery and so is the one from which it was made if it was made as claimed.

Trustee's Exhibit "A," Exhibit "C", in fact all the Exhibits of the Trustee by his attorney are all forgeries as far as Petition and Schedules go.

QUESTIONS PROPOUNDED TO ARGIE R. MAYS

Q. I will ask you to state whether any such paper as this with any prayer on it praying to be adjudicated not a bankruptcy has even been seen by you?

A. Now the facts are that this was all in the original "all printed" — "no writing on it except the names".*

The Petition filed in this Court was a printed petition. Record . . . Page — 127.

*("No writing in it except the names." It is out of the question to file such a petition and come within the prescribed Supreme Court rules.)

The Petition must be:

The Petition of....., of.....

in the County of..... and District and

State of..... and occupation as.....

There is no minute entry copy from the State Court Minute Book in the Record.

There is no minute entry of the alleged Judgement and thus there is no Judgement as alleged.

Movant insists on the certified copy of the minutes secured from the Minute Book of the Alleged Judgement and appellant, (Trial Record, — Pages 12 and 13, 45 and 70) of Dismissal of the Equity Circuit Court of Jefferson County of Alabama which is self-proving and is a judgement by law, both Federal and State, for appellant, for all he could have proved or claimed it is final and resjudicato in Bankrupt Court.

Clark v. Lawrence

118 U.S. 486.

The laws of each State determine when a Judgement becomes a lien.

Section 67F of the Act does not give a Bankrupt Court implied jurisdiction to determine the validity of such liens.

Taulele-Scott-Kitzmiller Co. v. Fox

264 U.S. 426. Reversing.

286 F. 351

The claim of Mrs. L.C. Fletcher was proven too late. The Court of Appeals, Fifth Circuit, determining the claim was filed August, 1929. Section 57 of the Act state that claims shall not be allowed after six months from the date of adjudication.

Re: 100 Fed. 2nd 175
35 Fed. Supp. 722
38 Fed. Supp. 869

The Claim of trustees was never provable in Bankruptcy and the invalidity relates back to the time the alleged Judgement was rendered and the nullification nullifies such Judgement and all subsequent proceedings thereon. It was never created. What was called a Judgement in fact is not a Judgement.

McCollough v. Parks
199 Sou. 750

The Bankrupt Petition alleging an Act of Bankruptcy only that debtors permitted a Judgement to be entered against him and unsatisfied was jurisdictionally defective and necessitating dismissal of petitions.

Re: Day 22 Fed. Supp. 946.

A petition for adjudication of Bankruptcy relying on debtors judgement and not vacating or discharging judgement must allege that a lien existed.

Re: Day 22 Fed. Supp. 956
Re: Republic Co. 109 Fed. 2nd 167

Be it enacted by the Senate and the House of Representatives of the United States Congress, etc.

In part . . . Section 237 "A"

A final judgement or decree in any suit in Court of a State in which a decision in a suit could be had where is drawn in question the validity of a Statute of the United States, etc., the writ shall have the same effect as if the judgement or decree had been rendered or passed in a Court of the United States.

(See: Record — Pages 12 and 13; 45 and 70 for Decree of Equity Court.)

SECTION 10, PAGE 8, OF THE ACT

No Court shall dismiss a Writ of Error solely because an appeal should have been sued out or when, etc., but such Court when such Error occurred shall disregard it and proceed as if that regard of its powers to review were properly invoked.

SECTION B

Any case in a Circuit Court of Appeals where is drawn a question of the validity of any Statute of any State, etc., may be taken to the Supreme Court for review a Writ of Certiorari.

1st. Complainant has no lawful claim or judgement against respondent Ed Wetzel and he owns, holds, and files his plea of Set-off against Mrs. L. C. Fletcher the complainant, in the sum of $20,800.00 and interest from March 2, 1916, at 8 per cent compounded semi-annually.

2nd. The alleged judgement was procurred by means of fraud and does not exist.

Exhibit "C" . . . Record — Page 53 and 58

Case 2553 in Equity Court.

3rd. That the procceedings herein are based on no petition or on a forged petition. Record . . . Page 66.

4th. That the Petitioner in the Petition is Ed Wetzee and not Ed Wetzel. Record . . . Page 66.

The Claim of Mrs. L. C. Fletcher has been denied by the State Equity Court, Jefferson County, Alabama.

Ed Wetzel has never consented to the proceedings in Bankruptcy.

1942 Fine Atrz Corp.
48 Fed. Supp. 619

Consent is necessary.

Gelreath v. Valley
256 U.S. 46-49
Re: Kaigler 264 Fed. 240
Re: Wood 278 Fed. 355
Re: Oliviso 10 Fed. Supp. 743
Re: Club 141 Fed. Supp. 694
90 Fed. 2nd 703
198 U.S. 280

The Bankrupt Court must consent to the determination by a State Court to determine controversy with respect to liens and property in Bankrupt Court's possession.

1940 Magnolia Petroleum Co.

309 U.S. 657

1941 Discuss 314 U.S. 657.

There is no minute entry of the Judgement claimed and never has been in the State Courts and it is not a Judgement.

McCollough v. Parks

199 Sou. 750

The Judgement must be entered on the minutes of the Court. The Judgement is only proven by the Minute Entry in the Minute Book and if not formally entered it is not a Judgement.

McCollough v. Parks

199 Sou. 750

If at the time of the Bankruptcy a suit or proceeding in the State Courts of which the Federal Courts might have jurisdiction, the adjudication does not oust the State Court of Jurisdiction and the State Court can hold its jurisdiction to final judgement of the controversy. The extent and validity of a debtor's obligation to pay a Creditor is that of the local laws of the State which governs the debt and construction given by the Courts of the State of its status relating thereto.

Security Mortgage Co. v. Powers
278 U.S. 149

About 50 other decisions on the same subject
Record . . . Page 72 and 73.

8th of the Petition was filed as alleged by Ed Wetzel, then he was Non Compos Mentis and had not lucid intervals, nor could he distinguish wrong from right, nor could he read or understand the Petition, nor was it read to him, and in any event he could not understand what was being done. Record . . . Page 73.

Such party can avoid the instrument so obtained.

I. C. R. R. v. Johnson
65 L. Ed 459 788

87 Sou. 866. 205 Ala. 1

Such persons cannot understand wrongful acts.

Re: 162 Fed. 674

Re: Ward 161 Fed. 755

Re: Kehler 162 Fed. 674

Record . . . Page 73

A Bankrupt Court cannot review or annul a judgement or decree of a State Court which subjects a lien or annuls a lien on property over which the State Court acquired jurisdiction prior to the Bankrupt proceedings against defendant and such judgement or decree is conclusive as to such defendant and trustee, in Bankruptcy.

Brown Shoe Co. v. Wynn
281 Fed. 807.
Record . . . Page 74

EVIDENCE OF L. C. ALBRIGHT

Record — Page 75

Q. Did you discuss with Mr. Wetzel the manner in which to list the claims of Mrs. L. C. Fletcher?

A. I did. It was listed as an invalid and non-existing claimed judgement. It was in my office. When I listed this judgement on there, Mr. Wetzel told me not to file it and I discussed it and he told me that L. C. Fletcher had no judgement against him, that it was a fake or false claim of judgement and he, Wetzel, said don't file it that way and I knew Mr. Wetzel's contention about it.

Q. Was Ed Witzel there when you filed it?

A. He was not there.

Q. And Mr. Wetzel had prior told you not to file it?

Mr. Mays, the Bankrupt Clerk informed movant that he knew he, movant, did not file the Petition because he, Mays, had not seen Ed Wetzel before that day, December 11, 1928.

Record . . . Page 76.

Again see Decree of Equity Court of Record page 77 and 78 of Jefferson County in which Mrs. L. C.

Fletcher had filed suit to test the validity of her alleged claim of Judgement which did not exist. This decree must be construed same as if rendered by a court of the United States.

Section 237 "A" and "B"

Under Revised Rules of the Supreme Court of the United States adapted February 13, 1939, effective February 27, 1939, is also made under Rules, October 1941.

Record — Page 168-169

ALLEGED BANKRUPT'S PETITION FOR REVIEW OF THE REFEREE'S ORDER, JANUARY 15, 1929

Filed January 16, 1929

In the matter of Ed Wetzel 27607, alleged Bankrupt. To the Honorable George P. Bandusant, Referee in

Bankruptcy in charge in the District Court of the United States for the Southern Division of the Northern District of Alabama.

Your Petitioner respectfully shows:

That he is the alleged Bankrupt in the proceedings. That on the 15th of January, 1929, an order, a copy of which is hereto annexed, was made and entered herein.

That said order was and is erroneous because of the matters, facts, and things set forth in the Excep-

tions to the said orders of the said Referee filed contemporaneously herewith.

That said order is erroneous upon the further separate and several grounds, as follows:

For that said order requires Petitioner to do and perform acts which from the pleadings heretofore filed herein and the legal and material testimony heretofore taken in this proceeding, he is not required to do as a matter of law, for that order is plainly and palpably erroneous for that I am contrary to the great weight of the Endorsee therein.

ED WETZEL

Subscribed and Sworn to.

Filed 11:35 A.M.
January 16, 1929.

See Exhibit No. 2, Bill of Exception and Assignment of Errors, Record Page 36 and 37, filed January 16, 1929, presented in Court December 11, 1928, plea of Jurisdiction of the Court claimed as of December 11, 1928.

All Citations given in Petition of Certiorari or Appeal as Errors are made a part of this brief.

Submitted for reversal,

ED WETZEL,
Movant.

INDEX

	Page
Record Page Objections 140, 141, 142, 144, 146 and 147	1
Record Page 30, 31, 32, 33, 34, 36 to 39	1
Record Page 140 Schedule A, Forgery	1
Record Page 53, 141, 179, 183	1
Record Page 142 Exhibit E is a Forgery	1
Record Page 144, 146, 147	1
Record Page 97, 98	1
Record Page Sec. 3, Rule C and E	2
Record Page 152 and Section 237 A & B Rule	2
Record Page 153, 154 and 155	2
Record Page 130 and Exhibit "O"	2
Record Page 159 and 160	3
Record Page 41 (5) and Record Page 9 Petition and Schedule are now hereby withdrawn and plead to the jurisdiction of this Court	3
Record Page 189 and 190	3
Record Page 189 and 190	3
Record Page 189 and 190	4
Record 4. The Plea to Jurisdiction was presented to Court Dec. 11, 1928, and filed Jan. 17, 1928	4
Record Page 14 is a falsification	5
Record Page 40 and 42, Section 3 of Act Sub. C & E as of Dec. 11, 1928	5
Record Page 36 (1) and Record Page 119, 120, 121, 122, 123, 124, 125, and 126	5
Record Page 182 and 181	5
Record Page 164	6

Ed Wetzel objects to exhibits of trustee attorney, A, D, E, F G and H. All are made from forged copies and forged instruments.

Record Page 140, 141, 142, 144, 146, 147.

The "Ed Wetzel" in the Bankrupt alleged petition is a forgery and it was not written by or by authority of Ed Wetzel, and was written when he was non compos mentis, and it is a forgery. Also the original petition and schedules were on Webber Book Co. stationary, and the name of Ed Wetzel or Ed Wetzee was written by unknown persons for fraudulant purposes.

See Rec. 30 and 31, Page 32 and 33-34-36 to 39.

Exhibit "C", Record page 140, Schedule "A" is a forgery and was made from a forged document. Record was made from forged copy. Ed Wetzel as respondent, Record Page 53, pleaded $20,000 set off against Mrs. L. C. Fletcher, complainant, and interest on same 8% semi-annually since March 2, 1916, in Equity Court of Alabama May 15-20.

Exhibit "D", Record page 141, is a forgery and name of Ed Wetzel is a forgery and all Exhibits and Records offered on hearing September 16, 1946, were made from forged alleged originals or no originals. Record, pages 179 to 183.

Exhibit "E"—Record page 142 is a forgery and was made from a forged document copy, and so is the name Ed Wetzel a forgery which is signed to the affidavits and name of Ed Wetzel, Record page 144 is a forgery or Document from which "E" was made or Document made from it is a Forgery. The Document was made from a forged paper. None were made or signed by Ed Wetzel or by his authority.

Exhibit "F", Record page 144—name of Ed Wetzel is a forgery.

Exhibit G and H, Record page 146 and 147, 1941 was made without the jurisdiction of the Court that made it, October 12, 1929, after the Petition and Schedules were withdrawn under Section 3 of Bankrupt Act, known as Act 21 Sub-section "C" and "E" and the name of Ed Wetzel is a forgery in each instance, as is relative Petition and or Schedules and some other papers. The Petition and Schedules were withdrawn December 11, 1928, as in effect at that time.

Exhibit "I" is left in Record page 149 and is original note delivered to the trustee, January 5, 1929, on which is claimed $165,000 now due. The Equity Court sustained all Ed Wetzel could of pleaded besides it's law.

Exhibit "J", Record page 152. The lower part was made without authority or jurisdiction because the Petition and Schedules alleged filed November 13, 1928 were withdrawn December 11, 1928 and the State of Alabama Equity Court on November 23, 1935 nullified the claim of judgement of Mrs. L. C. Fletcher and the trustee. It has not been revived or reinstated and cannot be reinstated now. This must be construed under the Writ of Errors and shall have the same effect as if the Judgement or decree had been rendered or passed in a Court of the United States. Section 237 A and B or rules.

Exhibit "K", Record page 153 was made without jurisdiction and after the Petition and Schedules were withdrawn, December 11, 1928, and after the State Equity Court had nullified the claim of judgement of trustee and Mrs. L. C. Fletcher. Same applies to Exhibit "L", Record page 154 and Exhibit "M", Record page 155.

Exhibit "O", Record page 156. Affidavit of Archie R. Mays. Each allegation made that Ed Wetzel filed any petition, is perjury, on November 13, 1928 or any other time is perjury, and each allegation of signature relative to said Petition and Schedules alleged made by Ed Wetzel is perjury and a forgery in each instance, for instance said (Archie R. Mays) Record page 130 Pettus to Archie R. Mays.— (You can look at the affidavit if you want to and if there is anything you want to add to it, you may do so. (There is no telling what was added or changed.)

All of the signatures alleged made by Ed Wetzel relative to Petition and Schedules are all forgeries and none were signed by or by authority of Ed Wetzel, and the alleged Ed Wetzel of Mulga, Alabama is a forgery in the alleged petition. None of the signatures of Ed Wetzel were signed by Ed Wetzel. In otherwise Ed Wetzel was wholly incapable mentally to know right from wrong at said time.

Record page 159. The signature Ed Wetzel to Petition or in Petition was not signed by Ed Wetzel, Record page 160.

Record page 9 (5th) shows the alleged Petition and Schedules filed November 13, 1928 are now hereby withdrawn and I plead to the jurisdiction of this Court and that it cannot proceed.

Record page 189 and 190, the opinion of the Court of Appeals is also assigned as Error, for instance Ed Wetzel is held without jurisdiction and not guilty as charged. The charge constitutes forging Lillie Toston, a negro woman's name to a contract, which contract is not signed by or for Lillie Toston and the charge is a fake charge and in violation of almost every known law.

Further exception is taken and claimed. The charge in opinions is that the case has been in too many Courts. It has not been to the Supreme Court of the State of Alabama as alleged.

It has not been heard or considered in as many Courts as charged in the opinions or alleged. The many Courts are not named.

The only Court that it was in was the Circuit Court 10th Judicial Circuit of Alabama, which had not had jurisdiction to even try the case, much less authority or jurisdiction to let case be tried in absence of defendant. The said Judge, himself, put defendant on a jury in another room of his Courts, prior to calling, if called, the case of this defendant, knowing or ought to know that the defendant was in a jury in his Court in another room, and thus knowing that defendant could not appear. Citation, litigants must be given opportunity to defend and notice of setting case for triel to complete jurisdiction of the Court. 102 S.E. 83.

From this Court the case went to the Equity Court of Jefferson County, Alabama, about 1918 and fought there which Court is at least superior to the lower or low Court. On November 23, 1935 the said Equity *Court nullified the alleged judgement claimed by trustee and attorney and administrator. All were defeated in the Equity Court and because there was no such judgement it is final* and is resjudicata in the Bankrupt Court. There is no judgement as claimed or ever has been. The $20,000.00 and interest 8% semi-annually was pleaded in the Equity Court and judgement is claimed here for $20,000 and interest 8% semi-annually from March 2, 1916 to date of payment. The claim is made against trustee Mrs. L. C. Fletcher and her administrator. It is somewhere around

$165,000 now. Judgement is claimed against trustee and administrator and bondsmen. The trustee should be required to make an Equitable Bond and not be permitted to defraud appellant as is being done in this case, so far.

The plea to jurisdiction in Bankrupt Court was presented December 11, 1928 and actually filed January 16 or 17, 1929 and many times refiled and instituted on later.

Citation:

> Bankrupt Courts being without jurisdiction of the original proceedings, all that is done under it is VOID. The assignments vacate all sales, invalidate it as worthless.
>
> Re: *Mason v. Dean,* 31 Fed. 2nd 945.

Further objection is made to Record Page 14, to wit:

Appellant filed a voluntary petition, 1928. This is a wilfull and known falsification and is untrue.

Objection is made to Record page 177, (or copies thereof). If objected to as error. Objection is made to all Documents designated for Record by trustee, Record page 177, 178 and 179 that were made after December 11, 1928, except designation 15.

Since jurisdiction of Bankrupt Court was presented to Referee on December 11, 1928 prior to claims filed or trustee appointed, Record page 40, specially pleads to jurisdiction of the Court and Record page 42 presented in open Court this 11th day of December 1928 citing Section 3 or 21 of Act Sub-section E and Section I meaning of words, Sub-section 1.

Therefore Re: *Mason v. Dean,* 31 Fed. 2nd 945 applies. Record page 36.

Bill of Exception filed January 17, 1929 with Plea to Jurisdiction.

(1) Record page 36. Referee erred in disregarding Petitioner pleading to him presented on December 11, 1928 and that the Petition was withdrawn December 11, 1928.

(2) The referee erred in disregarding Petitioner's plea to the jurisdiction of the Court presented to him on December 11, 1928. See *Mason v. Dean,* 31 Fed. 2d 945.

Objection is made to question and answer.

Pettus made — Record Page 119, 120, 121, 122, 123, 124, 125, and 126.

Archer R. Mays cannot on December 11, 1928 say he knows Ed Wetzel did not file any petition and in 1946 say Ed Wetzel filed the petition. He is wrong one time or another. It is a variation. When it was fresher in his mind he said Ed Wetzel had not been there and he had never seen Ed Wetzel before December 11, 1928.

Record page 182 shows plea to jurisdiction of Court was filed December 11, 1928.

Refers to plea filed December 11, 1928, and the alleged Petitions and Schedules are hereby withdrawn, filed in open Court this 11th day of December, 1928, Record page 182.

See Record page 181 and see Record, page 175, (8), and (9), and (12).

See Record page 164 (5)

The plea of non est faction in case filed in early stages that none of papers were signed or authorized by me is still in effect and insisted on.

ED WETZEL, for Certiorari.